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OFFICE OF PETITIONS

In re Patent No. 7,602,390 : DECISION ON REQUEST
Arnold, et al. : FOR
Issue Date: October 13, 2009 : RECONSIDERATION OF
Application No. 10/816,582 : PATENT TERM ADJUSTMENT
Filed: March 31, 2004 : and
Atty Docket No.07844-636001 : NOTICE OF INTENT TO ISSUE
/P589 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 11, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by three hundred and ninety-four (394) days..

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by three hundred and ninety-three (393) days is **GRANTED to the extent indicated herein.**¹

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on April 1, 2007 and ends on July 5, 2007, the day before the RCE was filed, and is 96 days, not 97 days. See 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 393, not 394 days.

¹ It is noted that patentees disclosed a period of reduction of 90 days pursuant to 37 CFR 1.704(c)(8) pursuant to applicants' duty of good faith and candor to the Office. A review of the record reveals that the reduction under 37 CFR 1.704(c)(8) was warranted for the filing of an Information Disclosure Statement on October 4, 2007, 90 days after a Request for Continued Examination was filed July 6, 2007. The reduction of 90 days is included in the calculation of 393 days of patent term adjustment. The Office thanks patentee for his good faith and candor in bringing this to the attention of the Office.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges receipt of the fee under 37 CFR 1.18(e).

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **three hundred and ninety-three (393) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,602,390 B2

DATED : Oct. 13, 2009

INVENTOR(S) : Arnold, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (387) days

Delete the phrase "by 387 days" and insert – by 393 days--